REMARKS

Applicants acknowledge the Examiner's statement that claims 3-6, 18-24, 30 and 32-34 are allowed, and that claims 8-13, 15, and 25 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, Applicants believe all of the pending claims are allowable over the cited reference, and respectfully request allowance of claims 1, 7-17, 25, and 27-33 in light of following remarks.

Claim Objections

Applicants have amended claims 27-29 to correct informalities in the claims. In particular, "claim 26" appearing after the "The method of" in claims 27-29 has been replaced with "claim 25" since claim 26 was previously canceled. Please note original "claim 25" appeared after "The method of" in the original claim 31.

Claim rejections under 35 U.S.C. §102

Claims 1, 7, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,724,813 to Fenelon et al. (Fenelon). A claim is anticipated only if each and every element as set forth in the claim is disclosed, either expressly or inherently, in a single prior art reference. Verdegal Bros. v. Union Oil. Of California, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicants submit that each and every element as set forth in the recited claims is not found, either expressly or inherently, in Fenelon. Thus, the cited references do not anticipate the claims.

Fenelon discloses a bypass system for use with a turbocharged engine that allows the bypass of a portion of the combustion air to prevent a compressor portion of the turbocharger surging. In particular, Fenelon discloses that an "engine controller," such as a engine electronic control module, contains a series of maps based on engine speed and is cooperatively associated with an atmospheric pressure sensor 35, an inlet manifold pressure sensor 37 and an engine speed sensor 39, to respond to changes in atmospheric pressure signals, intake manifold pressure signals sent by an intake manifold pressure signals and to engine speed signals to modulate the bypass valve 31 and prevent the compressor portion 11 of the turbocharger 3 from surging." (See Fenelon column 3, lines

40-51). According to the Office action, Fenelon discloses an engine control system for controlling a plurality of operational controls of the diesel engine system...when [a] sensor signal indicates a surge event. (See Office action at page 3.) However, as discussed above, the purpose of the control system disclosed in Fenelon is to modulate the bypass valve 31 in response to a **sensed speed and other sensed parameters** to prevent the compressor portion of the turbocharger 3 from surging.

In contrast, this patent application discloses an engine controller for ***controlling*** one or more engine system operational controls such as ***engine speed*** in response to an input signal received from a sensor sensing various operating parameters. (See application page 12, paragraphs 37-38.) For example, the present application discloses an embodiment of the present invention in which "the engine control system increases the speed of the diesel engine 102 when the senor signal indicates the air pressure within the intake manifold has decreased by 8 pounds per square inch (psi), followed by an increase in air pressure of 4 psi occurring within one second of the 8 psi decrease." (See Application page 14, paragraph 43). As described in the application, such a spike in the air pressure of the intake manifold is indicative of a surge event. (See Application page 14, paragraph 43). Controlling a by pass valve as a function of a sensed speed is not the same as controlling engine speed as a function a sensed operating parameter.

To this end, previously presented claim 1 recites, an engine control system responsive to the sensor signal for ***controlling a plurality of operational controls including a speed of the diesel engine***, wherein the engine control system ***modifies one or more operational controls including the speed of the diesel engine*** when the sensor signal indicates a surge event. The application also discloses a control system as described claim 7 that is responsive to a sensor signal for ***controlling a speed of operation of the diesel engine***, wherein when the engine system experiences a surge event, the engine control system increases the speed of the diesel engine to reduce turbocharger surge." Claim 25 recites, in part, "determining a change in the sensed operating parameter indicative of a surge event," and "***controlling a speed of the engine in response to a determined change***." Fenelon fails to teach or suggest ***controlling the speed*** of the engine. As such, the cited reference does not anticipate each and every element as set forth in amended independent claims 1, 7 and 25.

Claim rejections under 35 U.S.C. §103

Claims 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fenelon in view of U.S. Patent No. 4,012, 942 to Harned. As discussed above, Fenelon fails to teach or suggest a ***controlling the speed of the engine*** as described and claimed and in the present application. Moreover, the Examiner acknowledges that Fenelon fails to disclose a strain gauge or an accelerometer associated with surface of an air intake system, but cites Harned to remedy this deficiency disabling further selection by the user if the quantity of the selected time period exceeds a threshold value. Harned fails to teach or suggest ***controlling the speed of the engine***, and applicants submit that the cited references, whether consider alone or in combination as suggested in the Office action, fail to teach or suggest all of the features of applicants' claim 7. Thus, *prima facie* obviousness cannot be established and claim 7 is allowable over the cited reference. (See MPEP 2142 and 2143.) Claim 17 depends from claim 7, and is, therefore, allowable for the same reason as the independent claim from it depends.

Conclusion

In view of the foregoing, applicants submit that independent claims 1, 7 and 25 are allowable over the cited art. The remaining dependent claims are believed to be allowable for at least the same reasons as the independent claims from which they depend.

It is felt that a full and complete response has been made to the Office action, and Applicants respectfully submit that claims 1, 3-25, and 27-34 are in condition for allowance and that the entire application is now in condition for allowance. If the Examiner feels, for any reason, that a personal interview will expedite the prosecution of this application, he is invited to telephone the undersigned.

The fact that Applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating Applicants' agreement therewith.

The Commissioner is hereby authorized to charge any deficiency or overpayment of any required fee during the entire pendency of this application to Deposit Account No. 07-0846.

Respectfully submitted,

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